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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

FREDERICK WALZ,
Appellant,

–against–

TAX COMMISSION OF THE CITY OF NEW YORK,
Appellee

Appeal from the Court of Appeals of the State of New York

[redacted]

BRIEF OF PARISH HALL SCHOOL, INC. AS AMICUS CURIAE

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TAX COMMISSION OF THE CITY OF NEW YORK,
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Appeal from the Court of Appeals of the State of New York

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Parish Hall School, Inc., hereby respectfully moves leave to file the accompanying brief *amicus curiae* in this case in support of appellee as provided in Rule 42 of the rules of this Court. Permission to file this brief has been requested of both parties.

Parish Hall School, Inc. is a nonprofit religious and educational organization organized under the laws of the District of Columbia. At present the students of Parish Hall School (Episcopal) attend school with the students in "Campus School" (Roman Catholic) on the campus of

Catholic University. Both schools have secular classes in common, but divide up to receive special religious instruction in their own faiths.

Parish Hall School is interested in the Separation of Church and State and does not look to any government for any assistance for its educational activities. On the other hand, it would be hampered in its religious efforts if it were to be taxed on any real property which in the future it may find necessary to carry on its educational mission.

The function of this *amicus curiae* is to present additional legal authorities for consideration by this Court in this important litigation.

The attached brief is submitted in the hope that it will assist the court in its deliberations. For the foregoing reasons, the *amicus curiae* respectfully requests that this motion be granted.

Respectfully submitted,

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BRIEF OF PARISH HALL SCHOOL, INC.

INTEREST OF AMICUS

Parish Hall School, Inc. is a nonprofit religious church-sponsored educational corporation organized under the laws of the District of Columbia. As such it is entitled to the protections of the religious clauses of the First Amendment. It also accepts that the "establishment clause" of the First Amendment prohibits any government in the United States from aiding the school financially, since the primary purpose of the school is to educate in a Christian frame of reference. The school accepts the guidelines set forth in *Everson v. Board of Education* (330 U.S. 1, 15) as to the relationship

of a church-related school and the Federal and State Governments—in our case the District of Columbia.

Parish Hall School will need real property both for classrooms and for a chapel. Such real property will be used exclusively for educational purposes and the school shall propose to teach all subjects so as to relate the students to God. The school therefore believes that such a school is an instrument of religion and should be free of taxation on its real property used exclusively for religious purposes.

Whatever nonreligious property or income may be enjoyed is understood not to be relevant to the issues raised in this case.

STATUTE INVOLVED

Article XVI, Sec. 1, of the New York State Constitution and Sec. 420, Subdiv. 1, of the Real Property Tax Law of New York State authorize tax exemptions for real property owned by religious organizations and used exclusively for religious purposes.

THE QUESTION PRESENTED

Whether Article XVI, Sec. 1, of the New York State Constitution and Sec. 420, Subdiv. 1, of the New York Real Property Tax Law permitting tax exemptions for the real property owned by religious organizations and used exclusively for religious purposes violates the "free exercise" clause of the First-and the Fourteenth Amendment to the Constitution of the United States of America.

STATEMENT OF THE CASE

Frederick Walz is a citizen of the United States, a Christian, and not a member of any religious organization. He is a resident property owner in fee simple of real property located in the County of Richmond in New York City. He complains that Article XVI, § 1 of the New York State

Constitution and Sec. 420, Subd. 1, of the New York Real Property Tax Law unconstitutionally grant tax exemption to religious corporations on real property owned by them and used exclusively for religious purposes. He claims that such exemption "constitutes an involuntary payment by plaintiff to the aforementioned religious organizations, in violation of plaintiff's right of religious freedom" and without due process of law, in violation of the provisions of the Constitution of the United States of America.

The Tax Commission of the City of New York regularly grants exemptions from real property taxation to religious organizations on real property used exclusively for religious purposes.

SUMMARY OF ARGUMENT

There has recently been completed and published, authored by C. Stanley Lowell and Martin A. Larson, a 300-page study "The Churches: Their Riches, Revenues and Immunities." It shows that in 14 typical American cities and extrapolations therefrom, the assessed value of church property, the great proportion of which is not used for exclusively religious purposes, now reaches the astronomical figure of $102 billion. Voluntary contributions, passive income, active business income, government subsidies, and also such church-owned assets as stocks, bonds, investments in real estate, and commercial business property—as tax-exempt resources of churches—amount to some $164 billion.

Property used exclusively for religious purposes is but a fraction of this tax-exempt burden on the working citizens. Such property, unavoidably, is needed in relatively modest amounts to carry on the *identifying* function of churches—their relationship of people with God. This type of resource of churches was not considered when the principle of church and state was being engrafted into our constitutional system by the drafters of the religious clauses of the First

Amendment. Tax exemption for churches was not discussed, for, in fact, the problem was how to eliminate tax support for the churches.

Until the Federal Constitution was amended in 1791 the "State" had the power to levy taxes for any public purpose, both to raise revenue and to regulate activities. If the "State" desired to tax the property of churches designed and used exclusively for religious purposes it could have done so. At that stage in our nation's history, it was more likely that the governments were using taxes to support religion than to tax churches for revenue or control. After the First Amendment was adopted in 1791 and extended over the States by the Fourteenth Amendment adopted in 1868, it was no longer a legitimate end of government to either help or hinder churches in their religious functions. A new principle of government, called by Thomas Jefferson the separation of church and state, became the law of the land—a fundamental part of our political structure under our Constitution.

To summarize the argument presented in this brief, we believe that if the drafters of the religious clauses of the First Amendment were sitting as this Court, with all the information now available on the relationship of church and state in this country, they would have accepted two basic principles concerning church taxation as being compatible with the plan envisioned by their amendments to the Constitution:

(1) Real property owned by religious organizations used exclusively for religious purposes and other property designed and used exclusively for religious purposes are exempt as a matter of right from taxation by virtue of the "free exercise" clause of the First Amendment as extended to the States by the Fourteenth Amendment of the United States Constitution.

(2) Real property owned by religious organizations and not used exclusively for religious purposes and other property not designed and not used exclusively for religious

purposes are not exempt and cannot be exempted from such taxation as is imposed on similar property under similar circumstances owned and used by secular organizations by virtue of the Establishment Clause of the First Amendment as extended to the States by the Fourteenth Amendment of the United States Constitution.

Thomas Jefferson and James Madison today would be truly proud of the religious peace which pervades this great land based on their work and the efforts of many others which resulted in the fundamental principle of separation of church and state. The riotous conduct of sectarians in Ireland today gives raucous witness that the evils they helped us avoid are relevant to contemporary society and that we deal with no academic abstraction. This Court has an opportunity and a duty to clarify and preserve the constitutional basis of our religious freedom.

ARGUMENT

(1) REAL PROPERTY OWNED BY RELIGIOUS ORGANIZATIONS USED EXCLUSIVELY FOR RELIGIOUS PURPOSES AND OTHER PROPERTY DESIGNED AND USED EXCLUSIVELY FOR RELIGIOUS PURPOSES ARE EXEMPT AS A MATTER OF RIGHT FROM TAXATION BY VIRTUE OF THE "FREE EXERCISE" CLAUSE OF THE FIRST AMENDMENT AS EXTENDED TO THE STATES BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

(2) REAL PROPERTY OWNED BY RELIGIOUS ORGANIZATIONS AND NOT USED EXCLUSIVELY FOR RELIGIOUS PURPOSES AND OTHER PROPERTY NOT DESIGNED AND NOT USED EXCLUSIVELY FOR RELIGIOUS PURPOSES ARE NOT EXEMPT AND CANNOT BE EXEMPTED FROM SUCH TAXATION AS IS IMPOSED ON SIMILAR PROPERTY UNDER SIMILAR CIRCUMSTANCES OWNED AND USED BY SECULAR ORGANIZATIONS BY VIRTUE OF THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT AS EXTENDED TO THE STATES BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

On September 25, 1789, Congress proposed twelve articles of amendment to the Constitution of the United States. Except for the first two, they were ratified by the required number of States by December 15, 1791. These first ten amendments have since been known as the Bill of Rights. The original congressional resolution stated: "The Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: . . .

". . . –Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The restrictive clauses–"Congress shall make no law respecting an establishment of religion, or prohibiting the

free exercise thereof. . ." are the accepted limitations on Government power with which we are here concerned.

Limitations on the power of the State to legislate on certain subjects characterize a limitarian form of government. No such restraints hobble a totalitarian state.

One of the results of the Civil War was that these clauses, which were originally only a restraint upon Congress, were extended to limit the power of the state legislatures. *School District of Abington Township v. Schempp*, 374 U.S. 203, and cases cited therein; *Murdock v. Pennsylvania*, 319 U.S. 105, 108; *Everson v. Board of Education*, 330 U.S. 1; *Illinois ex rel. McCollum v. Board of Education*, 33 U.S. 203, 210-211, *Zorach v. Clauson*, 343 U.S. 306; *McGowan v. Maryland*, 366 U.S. 420; *Torcaso v. Watkins*, 367 U.S. 488; and *Engel v. Vitale*, 370 U.S. 421.

These two restrictive clauses create one of the most important of civil rights—namely the "free exercise of religion" which may not now be invaded by either the State governments or by the Federal Government to which the First Amendment originally addressed itself. Justice Black in *Gideon v. Wainwright*, 372 U.S. 335 (1963) stated: "Explicitly recognized to be of this 'fundamental nature' and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, *religion*, assembly, association. and petition for redress of grievances." (p. 341) In *McGowan v. State of Maryland*, 366 U.S. 420 (1961) Justice Frankfurter reminded in his separate opinion:

"The general principles of church-state separation were found to be included in the Amendment's Due Process Clause in view of the meaning which the presuppositions of our society infuse into the concept of 'liberty' protected by the clause. *This is the source of the limitations imposed upon the States.*" (p. 460) (emphasis supplied)

It must be kept in mind that something new was added to political science by the religious liberty clauses of the First Amendment—namely, a principle which in the short-

hand of popular parlance is called the separation of Church and State. For most of the history of mankind the Church and the State have been linked together, not separate institutions. The distinguishing function of any State is that it regulates the relationships between persons and persons, and persons and things in the area over which its power extends and over the subject matter where it has jurisdiction. Where in a country the existence of "God" is accepted—and this has been almost everywhere save in today's Communist empires—there is recognized a relationship of person to person and person to things and to "God." To some this is the most important relationship of all.

Since a State seldom if ever taxed itself or its parts, it followed that early Governments did not tax religious properties. While in North America, the Church and the State were, in many ways, still partners, tax exemption of property used for religious purposes was taken for granted. (Cf. *All Saints Parish v. Inhabitants of the Town of Brookline* (178 Mass 404, 59 N.E. 1003 (1901)). In fact, tax support for religious functions was the rule rather than the exception. (Cf. Maryland, 1692, "An act for the Service of Almighty God and the establishment of the Protestant Religion within this Province.") In Pfeffer on *Church, State and Freedom*, at page 184, it is stated:

"The universality of the exemption of church property from taxes in the United States is hardly open to doubt; constitutional or statutory provision for such exemption exists today in all states as well as in the District of Columbia. Churches, other houses of worship, and the land on which they stand are everywhere freed from tax levies, as is personal property devoted to religious uses." (Cf. also, *General Finance Corporation v. Archetto*, 93 R.I. 392, 176 A.2d 73 (1961) at p. 77).

Although one would expect that the constitutional basis for continuing the tax exemption of property used exclusively for religious purposes would have been thrashed out by our contentious ancestors at the time they separated

Church and State at the federal level, a recent book, "*Should Churches Be Taxed?*" by D. B. Robertson, points out the poverty of source material on this important subject:

"There is nothing in the Federal Constitution of 1787 which grants tax exemption. There is nothing in the U.S. Constitution today which forbids the taxing of the property or income of religious groups, though there are those who think that exemption is implicit in the "free exercise" clause of the First Amendment. It is significant that one finds no single reference to the question of tax status of church property in discussions of religion and the adoption of the religious clauses of the First Amendment. Even Madison, who entered a protesting note on what he had heard about proposals in Kentucky to exempt church property, does not seem to have raised the issue in his efforts in favor of the adoption of the religious clauses of the First Amendment. . . . One wonders, however, why the records show no single protest on the point of tax exemption for churches in the debates on the First Amendment. One must assume, as many commentators suggest, that even though our founding fathers were not necessarily overly pious men, they saw the social benefits of a "free religion" and they assumed (in the absence of obvious signs to the contrary) that the American people approved the continued tax-exempt status of the various religious groups on a nonpreferential basis. They were, in other words pro-religious, if anticlerical or anti-eccelesiastical." (pp. 69-70)

In his book *The Folklore of Philanthropy* (1959), John Barzum throws in a little folklore of his own: "It was the Founding Fathers–the men of letters who wrote the Declaration of Independence and the Federalist Papers–who laid it down as axiomatic that schools, churches, and other institutions for welfare should be tax-free. They fastened the custom upon us like an immemorial law." (p. 178)

The fact of tax exemption for the religious activities of churches has universally been taken for granted. President

Ulysses S. Grant in recommending in his "State of the Union" message of December 7, 1875 that the Federal Constitution be amended to make church real properties subject to taxation obviously took for granted that the Constitution somehow prohibited such taxation. He recommended that all church properties be taxed except "only the last resting place of the dead, and possibly, with proper restrictions, church edifices." Similarly *Corpus Juris Secundum* reveals no questioning of the practice of state courts exempting the real estate of religious institutions from taxation especially where the exemption is spelled out in state constitutions and statutes. (84 C.J.S. 289-291). Arvo Van Alstyne in *Tax Exemption of Church Property*, 20 Ohio St., L.J. 461 (1959) points out: "Despite differences of emphasis, shortcomings of statutory language and unnecessarily voluminous litigation, it is evident that the policy of exempting church property from taxation is firmly rooted in American law."

Claude W. Stimson in his article *Exemption of Property from Taxation in the United States*, 18 Minn. Law Review 411 (1933-34), suggests that the "tradition" of tax exemption for churches comes from the fact that historically churches were public institutions not only exempt from taxes but actually supported by taxes. "A perusal of the history of tax exemption indicates that the granting of tax immunity to ecclesiastical and military property is probably as old as the institution of taxation. Church property, for example, was exempted under the doctrine that it ceased to be under human control when it was devoted to God. English history of the eleventh and twelfth centuries contains examples of ecclesiastical and military exemption as an accepted part of the tax systems. . . . The exemption of church and military property was handed down as a tradition, one of the many that the American colonists transplanted from Europe. The established colonial churches, in most cases, were public institutions supported from the government treasury." (p. 416)

This Court also has uniformly taken for granted the constitutionality of statutes granting tax exemption to "church buildings and ground actually occupied by such buildings." In *Gibbons v. District of Columbia,* 116 U.S. 404, 406 (1886), this Court held taxable real property owned by a church in the City of Washington and *not* used exclusively for religious purposes. The Court pointed out: "Upon the construction most favorable to the appellant, these statutes exempt nothing from taxation beyond church buildings and grounds actually occupied for such buildings, and the lands or grounds appurtenant to any such building, so far as reasonably needed and actually used for its convenient enjoyment for its legitimate purpose. Even parts of the exempted buildings and lands, if used to secure a rent or income, or for any business purpose, are taxable. But land which is neither actually occupied for a church building, nor reasonably needed and actually used for the convenient enjoyment of the building as a church, is not exempt from taxation, whether it is used for any other purpose or not." (p. 406-407) This opinion is precedent for holding constitutional a statute exempting from taxation real property used by churches for exclusively religious purposes. But it did not go into why that was so.

It is widely recognized that the provision respecting religious liberty in the Virginia Declaration of Rights of 1776 and the First Amendment to the Constitution have influenced similar provisions in almost every nation.[1] George Nebolsine in his examination of constitutional provisions and practices of European nations noted that they have followed the practice of our Country in exempting property used for religious worship from taxation.[2] While our Country may go beyond the scope of other nations in pro-

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[1]E.g., see Dr. C.A. Dunshee de Abranches, Protecano International Dos Dirietos Humanos (Brazil, 1964), pp. 39-40.

[2]George Nebolsine, Fiscal Aspects of Foundations and Charitable Donations in European Countries (European Cultural Foundation, 1963), p. 21.

tecting religious liberty, what others do and understand to be proper is clearly worthy of consideration by this Court in interpreting our Constituion.

Religion is deep in the hearts of the great majority of Americans—"religion" that is—not necessarily churches. Real property such as church sanctuaries and personal property designed for exclusively religious purposes and so used in the solemn and joyful task of relating persons to God command great public respect even among those whose experience does not permit them to accept a personalized God. Few will long tolerate the States' secular presence to burden or harass the free exercise of religion by taxing their rituals and sanctuaries, their prayers and blessings. Our people through their several constitutions have chosen to leave the relationships of people to God in the hands of the individual in his home or with groups of like-minded in their churches and synagogues. Our people through their Bill of Rights have accepted religious freedom as a civil right protected against any of their numerous Governments. To the extent that the worship function requires rituals, religiously designed personal and real property, architecture, poetry and music for its accomplishment, it is a custom of our people from time immemorial that tax exemption be permitted—this custom became "law" in the "free exercise" clause of the First Amendment.

This Court can remember the popular misconceptions which angered many good people arising from misinterpretation of the school prayer case. (*Engel v. Vitale*, 370 U.S. 421 (1962)). The Court was foolishly accused of driving "God" out of the schools; of forbidding voluntary prayers. In fact, it was only the practice of government officials in composing prayers and directing that they be recited like some sort of state program of religious calisthenics which this Court held contrary to our system of separation of church and state. Yet the atheists rushed in to prevent children from bowing their heads in silent meditation or singing Christmas carols and the godfearing rushed in to amend the Constitution to restore what had not been removed.

We contend that this Court may properly read the "free exercise clause" so as to stay the hand of the tax collector from burdening real property *used* for exclusively religious purposes (*Murdoch v. Pennsylvania,* 319 U.S. 105 (1943)). But, it is of equal importance that this Court clearly limit this exemption to strictly bona fide religious functions, otherwise a religious gold rush will be on to cover almost everything under the term "religious" from bingo games and church business enterprises to hospitals and poorhouses.

Of course real property is not *designed,* as personal property usually is, and so its *use* is determinative of whether it is protected from taxation not its *design.* It matters not in this context what other types of property—money, pencils, stocks, bonds—are used for, it is what they are designed and used for. It is too easily claimed that all property can be used to support religious activities. Property other than real estate to be protected from the State must be both *used exclusively for religious purposes* and *be designed* and made *exclusively for religious purposes.* For example, stained glass windows, church organs, chalices and candlesticks, altars, hymnals and Bibles are designed and used for exclusively religious purposes. These, for the preservation of religious liberty, should be exempt from taxation. Automobiles, private homes, stocks and bonds, and business, while often "used" to support religious activities, are not designed for such use and are not ordinarily exclusively so used. These properties must be taxed when owned by churches just as they are when owned by secular organizations.

On the other hand, if this Court should read the First Amendment to permit governments to either tax real property used exclusively for religious purposes or to exempt such property, at their discretion, then the religiously unconcerned, those hostile to the notion of God, those who give the Church and religion no priority as a public purpose or concern, may rush in to tax and destroy the sanctuaries, stone by stone, tax by tax.

It cannot be overemphasized that this is not the usual "tax" case, but a unique challenge to religious liberty. This Court has stated that the "great liberties insured by the First Article" occupy "a preferred position in our basic scheme." *Prince v. Massachusetts,* 321 U.S. 158, 164 (1944). The "establishment clause" put a stop to the then prevailing practice of supporting religion with tax dollars. Justice Black in *Everson,* 330 U.S. 1 (1947) summed it up: "No tax in any amount large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect a 'wall of separation between church and state'." (p. 16) But can the "establishment clause" be turned into an invitation for the federal and state governments to impose taxes at will on churches—on their religious activities and properties used to pursue these activities? Since the church and state are now safely on their respective sides of the wall of separation, Justice Black might have added: "Nor may any tax be imposed on exclusively religious activities or church properties designed and used exclusively to teach or practice religion."

It is because the wall of separation has two sides that the status of "religion" differs from that of the free press and other rights protected by the First Amendment. That religious liberty is a two-sided wall protecting the State from the church and the church from the State was long ago recognized in a South Carolina case, *Harmon v. Dreher* (1 Speer's Equity 87) cited with approval in *Watson v. Jones,* (13 Wall. 679, 730 (1871)), and in *Everson* (supra at p. 15): "The structure of our government has, for the preservation of civil liberty, rescued the temporal institutions from religious interference. On the other hand, it has secured reli-

gious liberty from the invasion of civil authority." The State must be free of involvement in the affairs of the church and the church must be free of harassments or help from the State. Free in what way? Each must be free to carry on its distinguishing functions without the interference of the other. The constitutional plan accepts a "neutrality" between church and church and between church and State in our society:

> "The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel, whether its purpose or effect be to aid or oppose, to advance or retard . . ." (*School District of Abington T.P. Pa. v. Schempp*, 374 U.S. 203, 226 (1963))

When those who prepared the First Amendment and those who adopted it turned their attention to its wording, they had at hand Samuel Johnson's *A Dictionary of the English Language* in two volumes, published in 1755, which is incidentally equally available to this Court in the original in the rare book room of the Library of Congress.

The definitions are clear:

> "*Religion* 1. Virtue, as founded upon reverence of God and expectation of future rewards and punishments. (If we consider it as directed against God, it is a breach of *religion*; if as to men, it is an offence against *morality*.) (South)
>
> 2. A system of divine faith and worship as opposite to others." x x x
>
> "*Divine* 1. Partaking of the nature of God"
>
> "*God* 1. The Supreme Being - God is a spirit, and they that worship him must worship him in spirit and truth. (John IV: 24)"

Jefferson reiterated the then contemporary meaning of the term "religion" in his letter to the Danbury Baptist

Association (8 Jeff. Works 113, cited in *Reynolds v. United States*, 98 U.S. 145, 164 (1878), where he wrote: ". . . religion is a matter which lies solely between man and his God. . ." This Court also recognized the definition found in Johnson's Dictionary and has limited the meaning of "religion" as Johnson did: "The term 'religion' has reference to one's views of his relation to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. . ." (*Davis v. Beason*, 133 U.S. 333, 342 (1889)). John Locke stated in 1689, "I esteem it above all things necessary to distinguish exactly the business of civil government from that of religion and to settle the just bounds that lie between the one and the other. . ." Locke, *A Letter Concerning Toleration*, in 35 Great Books of Western World (1952 - cited in *Schempp*, supra p. 231.)

The free exercise of religion, as defined above, is a matter of right—a constitutional right, now often described as a "civil right." "A constitutional 'right' means a legal relationship, the enjoyment of which may not be withdrawn save by a change in fundamental constitutional law." (25 C.F.R. 2.1 (f)). These civil rights which are guaranteed by the Bill of Rights are limitations on the authority of government. For example, no State may prohibit free speech, establish religion, or, here, tax the religious means used by churches to carry on their exclusively religious functions. Ordinarily, to enforce a "right" no action on the part of Government is required but merely a forbearance to act—here, not to tax real property owned by churches and used for exclusively religious purposes.

The interpretation of the "free exercise" clause for which we are contending will leave adequate room for local variations. The word "exclusively" can be interpreted broadly or narrowly in each of the 50 states with their several communities. The term "exclusively" will serve to eliminate activities other than "religious" which can reasonably be described as belonging to any additional category. Such an activity as the operation of a business, obviously, will not be for exclusively religious purposes. While a business organized

to perform services or create products may also serve God, this merely means that it is involved in one of the activities which while not exclusively religious are pleasing in the eyes of the Lord. To those deeply dedicated to religion all activities should so serve God.

Arvo Van Alystyne pointed out in *Tax Exemption of Church Property* (supra): "In some states, statutory provisions expressly deny exemption to otherwise qualified church property if income or revenue is derived therefrom;" (p. 478). In general, church property which produces income–even if the income is used exclusively for religious purposes–cannot be described as property used exclusively for religious purposes. (Cf. *In re Bond-Hill-Roselawn Hebrew School*, 151 Ohio St. 70, 72-73, 84 N.E. 2d 270, 272 (1940)) for "liberal" interpretation of "exclusive" in this context.

The limited interpretation of the word "religion" as used in the First Amendment wisely avoids bringing under the umbrella of the religious clauses activities which are not exclusively religious and would not have been considered pertinent in this constitutional context by the authors or adopters of these clauses. The "free exercise" protection was not directed at activities other than "religion"–*i.e.*, the relating of persons or things to "God", or as Mr. Justice Douglas explains in *United States v. Ballard* (322 U.S. 72 at p. 87 (1944)): "*Man's relation to his God* was made no concern of the state." (emphasis supplied)

It is unavoidable that any tax exemption made available to protect the exclusively religious functions of churches, as demanded by the "free exercise" clause of the First Amendment, runs a risk of abuse in that there inevitably will be those who will attempt to extend the protection to activities other than religious. The simple fundamental function of religion is to relate persons of God. God is a term not limited to the formal faiths of the Christian, Moslem or Judaist world, but is as broad as described in F. C. Salisbury's "Speaking of Politics" (1956)–also available in the Supreme Court Library or Library of Congress:

> "A 'God' is any person, force or thing worshipped by a person or group of persons, the existence of which is beyond the scientifically verifiable, which has, or is described as having, an effective relationship with persons and things." (p. 264)

Mr. Justice Frankfurter in his separate opinion in *McGowan v. State of Maryland*, 366 U.S. 420, 459 (1961), brings our attention to three opinions of this Court which held unconstitutional tax levies on exclusively religious or, as he writes, "sacramental" activities: "In each of these cases, it was believed that the State's need for revenue, which could be satisfied by taxing a variety of sources, did not justify a levy imposed upon an activity which in the light of history could reasonably be viewed as "sacramental." (pp. 462-463) The cases referred to were: *Follett v. Town of McCormick*, 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938; *Murdock v. State of Pennsylvania*, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292; and *Jones v. Opelika*, 319 U.S. 103, 63 S.Ct. 890, 87 L.Ed. 1290. In *Follett v. Town of McCormick* (supra) Justice Douglas summed up: "The exaction of a tax as a condition to the exercise of the great liberties guaranteed by the First Amendment is as obnoxious (*Grosjean v. American Press Co.*, supra;) as the imposition of a censorship or a previous restraint. *Near v. Minnesota*, 285 U.S. 697. For, to repeat, "the power to tax the exercise of a privilege is the power to control or suppress its enjoyment." (p. 577)[3]

Mr. Justice Murphy in his concurring opinion in *Follett* (supra, p. 578) pointed out the answer to criticisms which will certainly be argued in this litigation:

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[3]In *Zorach v. Clauson*, (343 U.S. 306) Mr. Justice Douglas wrote that it is the common sense of the matter that the church and the State are not to be aliens to each other and that it would be carrying separation of church and state too far if "churches could not be required to pay even property taxes." Perhaps he would be willing to rephrase that sentence to read: "Churches could not be required to pay even taxes on property not used exclusively for religious purposes."

"It is claimed that the effect of our decision is to subsidize religion. But this is merely a harsh way of saying that to prohibit the taxation of religious activities is to give substance to the constitutional right of religious freedom.

"It is suggested that we have opened the door to exemption of wealthy religious institutions, like Trinity Church in New York City, from the payment of taxes on property investments from which support is derived for religious activities. It is also charged that the decision contains startling implications with respect to freedom of speech and the press. I am neither disturbed nor impressed by these allegations. We are not called upon in this case to deal with the taxability of income arising out of extensive holdings of commercial property and business activities related thereto. There is an obvious difference between taxing commercial property and investments undertaken for profit, whatever use is made of the income, and laying a tax directly on an activity that is essentially religious in purpose and character or on an exercise of the privilege of free speech and free publication.

"It is wise to remember that the taxing and licensing power is a dangerous and potent weapon which, in the hands of unscrupulous or bigoted men, could be used to suppress freedoms and destroy religion unless it is kept within appropriate bounds." (pp. 578-579)

Of the three cases cited by Mr. Justice Frankfurter, this Court here faced, discussed, and resolved the problem of taxability of religious activities most closely in *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). The question was raised as to whether a municipal ordinance imposing a license "tax" on the distribution of religious literature with a solicitation of funds was constitutional. This Court pointed out: "Those who can tax the exercise of this religious practice can make its exercise so costly as to deprive it of the resources necessary for its maintenance. . .a state may not impose a charge for the enjoyment of a right granted by the Federal Constitution. . ." (pp. 112-113). The majority

opinion was written by Mr. Justice Douglas and is of persuasive authority in this case.

The dissenting opinion of Mr. Justice Reed would provide a ready-made brief for those who will contend that the church in its purely religious activities—particularly property used exclusively for religious purposes—may be taxed—and consequently may be exempted from tax by operation of statute or State constitutional provision. (*Murdock v. Pennsylvania*, supra at 117-140). Mr. Justice Reed did not accept the majority position but contended: "Religious societies depend for their exemptions from taxation upon state constitutions or general statutes, not upon the Federal Constitution." (p. 128) He was impressed by the possibility of a similar claim of tax exemption by the press for he warned, relying on *Grosjean v. American Press Co.*, 297 U.S. 233, 250, that: "It is not intended by anything we have said to suggest that the owners of newspapers are immune from any of the ordinary forms of taxation for support of the government." But he forgot that "religion" in the Constitution is unique and not like the other freedoms in that not only is its exercise guaranteed against restrictions but the State may not benefit or aid this exercise.

On the other hand, the state may aid the press, give prizes for speeches, help the people to assemble, pay writers to draft their petitions—but it may not single out religion for any such aid. Look what happened when a state tried to help by writing a prayer! (*Engle v. Vitale*, 370 U.S. 421 (1962)). If the "free exercise clause" does not protect from taxation the real property of churches used exclusively for religious purposes, or the other property of churches *designed and used exclusively for religious purposes*, then the "establishment clause"—particularly as interpreted and explained by the Court in *Everson*—would require that such property be taxed the same as under any other ownership for any purpose for which a tax was assessed. If the "free exercise clause" does not protect from taxation such property of churches used exclusively for religious purposes, then appel-

lant's position is well taken. In such a case any tax exemption not protected by the "free exercise clause" and enjoyed by a church would be an indirect subsidy, a privilege, or aid to religion prohibited by the "establishment" clause of the First Amendment.

Mr. Justice Frankfurter in his dissent in *Murdock* (supra at 134) covers many of the points that can be raised in opposition to the constitutional principle suggested by the majority opinion in that litigation and contended for in this brief. He is correct that no one is contending that "a tax upon the income of a clergyman would violate the Bill of Rights. . . . no one would suggest that a clergyman who uses an automobile or the telephone in connection with business thereby gains a constitutional exemption from taxes levied upon the use of automobiles or upon telephone calls." (p. 135) The personal income or property of a clergyman or religious worker is ordinarily no different from similar income or property of persons employed in other activities. The great majority of the real property owned and used by persons involved in religious enterprises is seldom used exclusively for religious purposes. Ordinary business uses intrude on this "exclusivity." The bulk of the personal property so used was not designed and made for exclusively religious functions, but is property which can be used in secular activities and is so used.

On the other hand, it is obvious that a house of worship is used for worship—it has no other substantial or primary activity. Other uses are not protected by the "free exercise" clause from the hand of the tax collector. Actually, tax exemption of the income or property of clerics may be an unconstitutional aid to religion which could violate the "establishment clause." We agree that "a tax measure is not invalid under the Federal Constitution merely because it falls upon persons engaged in activities of a religious nature." (*Murdock*, supra p. 135). A tax measure to be invalid must fall on real property used exclusively for religious purposes or on personal property designed exclusively for religious use and so used.

Mr. Justice Frankfurter further in his dissent in *Murdock* pointed out: "As I read the Court's opinion, it does not hold that the taxes in the cases before us in fact do hinder or restrict the petitioners in exercising their constitutional rights. It holds that the power to tax the exercise of a privilege is the power to control or suppress its enjoyment." (p. 137) Justice Frankfurter stated further: "The power to tax, like all powers of government, legislative, executive and judicial alike, can be abused or perverted. The power to tax is the power to destroy only in the sense that those who have the power can misuse it." (supra, p. 137) The majority in *Murdock* put an end to this debate by recognizing that implicit in the "free exercise" clause is a limit on the State's power to impose a tax which restrains the free exercise of religion. Thus a myriad of contentions were voided by a simple recognition of the fact that the "free exercise" clause of the First Amendment withdraws the power to tax where it can be a restraint on the "free exercise" of religion. The power cannot be abused or perverted; it just doesn't exist!

The reasoning in *Murdock* brings us then to the general power of the State in our constitutional system to tax and to exempt from taxation. The power of the State to tax not merely as an instrument to raise revenue but also as a social control is explained in *Carmichael v. Southern Coal Co.*, 301 U.S. 495: "Where the public interest is served one business may be left untaxed and another taxed, in order to promote the one . . . The legislature may withhold the burden of the tax in order to foster what it conceives to be a beneficent enterprise. . ." (p. 512) It would follow that if the State may tax real properties of churches used exclusively for religious purposes then either the federal or the state governments may leave such properties taxed or untaxed in order to promote or discourage certain churches, to restrict or suppress religion or to foster what is considered a beneficent exercise of religion. This would defeat the purpose of the great constitutional principle of separation of church and state.

In *Carmichael*, Mr. Justice Stone pointed out: "*Fear of constitutional restrictions*, and a wholesome respect for the proper policy of another sovereign, would explain [tax] exemptions of the United States, and of interstate railways. . ." (emphasis supplied, p. 513). All of the generalizations of law, set forth so clearly in *Carmichael*, were subject to the proviso that no constitutional restrictions were present requiring that the property be exempt from tax. The court could properly say in *Carmichael:* "It is inherent in the exercise of power to tax that a state be free to select the subjects of taxation and to grant exemptions. . . This court has repeatedly held that inequities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. . .

"Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis and when subjected to judicial scrutiny this must be presumed to rest on that basis if there is any conceivable state of facts which would support it. . .

"This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. *A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution.*" (pp. 509-510) (emphasis supplied).

Further, in *Loan Association v. Topeka*, 20 Wallace, 655, 22 L.Ed. 455 (1874), this Court reminds that:

"Of all the powers conferred upon government that of taxation is most liable to abuse. Given a purpose or object for which taxation may be lawfully used, and the extent of its exercise is in its very nature unlimited. . .

"The power to tax is therefore the strongest, the most pervading of all the powers of government, reaching directly or indirectly to all classes of the people. It was said by Chief Justice Marshall, in the case of *McCulloch v. The*

State of Maryland, 4 Wheat. 431, that the power to tax is the power to destroy." (p. 663)

Chief Justice Marshall in *McCulloch*, supra, also pointed out: "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, *which are not prohibited*, but consistent with the letter and spirit of the Constitution, are constitutional." (emphasis supplied) What does that mean for this case? It means that under the broad power to tax granted to the Federal Government by the Constitution before its amendment—the taxation of church real property used exclusively for religious purposes would have been permitted—but since the purpose and effect of the subsequent "free exercise" clause of the First Amendment was to limit this broad power, the taxation of "religion" was thereafter prohibited.

While the United States might have been described as a "limitarian" form of government before the Constitution was amended, it certainly became such after the adoption of the First Amendment. To paraphrase Chief Justice Marshall—subsequent to the First Amendment, it was no longer a "legitimate end" to tax real property used exclusively for religious purposes whether for the purpose of raising revenue or as a "device for regulating conduct." Mr. Justice Douglas in his concurring opinion in *First Unitarian Church v. County of Los Angeles*, 357 U.S. 545 (1958) put it nicely: "There is no power in our Government to make one bend his religious scruples to the requirements of this tax law."

The intent, if not the letter of the constitution, as amended, no longer permits a tax which would place a burden on the protected right of free exercise of religion. One might ask, "Why not the letter of the First Amendment? Why, if the drafters of the First Amendment wished to protect churches from the possibility of tyranny by taxation, did they not so provide in express language?" The answer is clear: "No one had to fear any blows to religion

from Federal taxation, it being limited in scope and relatively unimportant, so much so that no mention of taxation was made in the entire Bill of Rights."

Chief Justice Marshall further made clear that when the Federal Government or the states have a constitutional right to tax—not prohibited by direct or indirect constitutional provision—the various legislatures have the final say as to the amount, type or extent of the particular taxation. There can be no doubt but that the degree of necessity of a federal or state act is for Congress or the state legislature, not for the courts. Marshall explained: "Should Congress, in the execution of its powers, adopt measures which are prohibited by the constitution, or should Congress, under the pretext of executing its powers, pass laws for the accomplishment of objects not intrusted to the government, it would become the painful duty of this tribunal, should a case requiring such a decision come before it, to say that such an act was not the law of the land. But where the law is not prohibited, and is really calculated to effect any of the objects entrusted to the government, to undertake here to inquire into the degree of its necessity, would be to pass the line which circumscribes the judicial department, and to tread on legislative ground. This court disclaims all pretentions to such a power." (*McCulloch*, supra, p. 423) If the United States or the State of New York have authority to tax the real property of churches used exclusively for religious purposes, Congress and the state legislatures then have the final say as to what degree of taxation might satisfy their objectives. Either they have the right to tax such church property as they will, or they have no right to tax such property at all.

The First Amendment in stating that "Congress shall make no law. . . prohibiting the free exercise [of religion]" meant exactly what it said, and *tax laws are laws.* Any State government, save ours, with or without the consent of its people may be hostile to religion and churches. As the courts have pointed out, if the federal and state governments

have the right to tax or not to tax the property of churches used exclusively for religious purposes, these same governments will have the right to tax them out of existence. Outstanding examples are sanctuaries used *exclusively for religious purposes* including the Washington Cathedral of the Episcopal Church and the Washington Shrine of the Immaculate Conception of the Roman Catholic Church. If such church buildings are taxed by hostile administrations, will such governments prove as broadminded as the Soviet Union which at least would preserve them as museums? One important difference between the Soviet constitution which also enforces separation of church and state and the Constitution of the United States is that the Soviet constitution separates the church and the State in such a way that the church can be not only separated but eliminated. The United States Constitution separates the church and the State but protects the church from the State and leaves both free to carry on their functions independently—of one another, dependent as both are on the other to exist in the same society. It would be ironic if this Court were to reduce the religious clauses of the First Amendment to a weapon against religion which the similar religious clauses of the Soviet constitution actually are.

The term "church" as used in the phrase "separation of church and State" refers to groups of persons come together to relate to God. Often churches undertake many activities which are not only not exclusively religious but actually are the province of other secular organizations—labor relations, health, business, secular education, charities, and the like. Churches often claim, or are gratuitously given for their nonreligious activities and properties, the constitutional protection of the "free exercise clause" while being unwilling to admit that the same activities and property come under the prohibitions of the "establishment clause". (Cf. *Everson v. Board of Education*, 330 U.S. 1 (1947)). For example, the unrelated business activities of churches are familiar to the general public and to this Court. They have been

thoroughly spelled out in "The Churches: Their Riches, Revenues and Immunities," by Martin A. Larson and C. Stanley Lowell (1969). In addition, the constitutionality of the tax exemption afforded by federal statute to the unrelated business income of churches is being contested in the Federal District Court in New York City in *Americans United v. Stratford Retreat House.* (U.S.D.C. Southern Dist. of N.Y. Civil Action N. 289-69). There it is contended that tax exemptions, other than on the exclusively religious properties and functions of the church, violate both the "establishment" and "free exercise" clauses of the Federal Constitution. It is also subject to litigation in the federal District Court in Baltimore, Maryland, in *Seversmith v. Machiz.* (U.S.D.C. District of Maryland Civil Action N. 15756). The justified cry against the financial privileges of churches sheltered by various and numerous forms of tax exemption should not be directed against the universal tax exemption on property used for exclusively religious purposes, but against the exemptions and privileges enjoyed on other types of property owned by churches. The real social danger from the tax-exempt incomes and properties of churches arises from their income producing properties—their unrelated businesses—not from their property used exclusively for religious purposes. These other nonreligious properties are certainly taxable, for as Mr. Justice Douglas pointed out in his concurring opinion in *Engel v. Vitale*, 370 U.S. 421 (1962): "The point for decision is whether the Government can constitutionally finance a religious exercise. Our system at the federal and state levels is presently honeycombed with such financing. Nevertheless, I think

it is an unconstitutional undertaking whatever form it takes." (P. 437 and Note (1))

Religious persons gathered together in what is above defined as a "church" or as individuals have a constitutional right to make choices in how they worship "God." Others not gathered together as a "church" or individually may choose not to worship "God." This is the free exercise of religion. Some may choose to erect a great cathedral at their own expense. Others may worship in a store front church or at home. The choice of whether to worship by the erection of a cathedral would no longer be "free choice" if the property to be used were subject to the State's unlimited power to tax. In such a situation the initial costs plus taxes might well be prohibitive. Property taxes might require that an existing cathedral be demolished or abandoned. The same problem is not present where the legislative body, usually local, might find it necessary to *assess* all properties in a particular neighborhood for streets, sewage, sidewalks and such. *"Qui sentit commodum debit sentire onus"*—as our predecessors would have put it. This would not be a "tax". It was explained in *Carmichael v. Southern Coal & Coke Co.* (301 U.S. 495).

> "A tax is not an assessment of benefits. It is, as we have said, a means of distributing the burden of the cost of government. The only benefit to which the taxpayer is constitutionally entitled is that derived from his enjoyment of the privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes. See *Cincinnati Soap Co. v. United States*, supra. Any other view would preclude the levying of taxes except as they are used to compensate for the burden on those who pay them, and would involve the abandonment of the most fundamental principle of government—that it exists primarily to provide for the common good." (p. 523)

It is only taxes—not assessments and other charges for bona fide services which churches may avoid by reason of

their favored position under the First Amendment.[4] It is real property used exclusively for religious purposes and personal property designed for and exclusively used for religious purposes—not income producing property—which qualified for this basic protection.

Mr. Justice Reed in his dissenting opinion in *McCollum v. Board of Education*, 333 U.S. 203 (1948) accepted freedom from taxation as one of "those incidental advantages that religious bodies, with other groups similarly situated, obtain as a by product of organized society. This explains the well-known fact that all churches receive 'aid' from government in the form of freedom from taxation." (p. 238) Actually, in our American society no other groups are similarly situated to a religious body. The State is not prohibited from aiding any other group to carry out its purposes nor forbidden to hinder it at the same time. (Cf. *Everson* at p. 15). If the church is advantaged by the tax exemption on its property used exclusively for religious purposes under the "free exercise" clause, then it is disadvantaged by the prohibition of tax-supported aids under the "establishment" clause.

Mr. Justice Brennan in his concurring opinion in *Abington School District v. Schempp*, 374 U.S. 203 (1963) at p. 260 equates tax exemption with ordinary governmentally provided services such as police and fire protection. He stated: "For religious institutions simply share benefits which government makes generally available to educational, charitable, and eleemosynary groups. And as among religious beneficiaries, the tax exemption or deduction can be truly nondiscriminatory, available on equal terms to small as well as large religious bodies, to popular and unpopular sects, and to those organizations which reject as well as those which accept a belief in God." (p. 302) In law, tax exemption for churches is in a separate and different category as far as a religion activity is concerned, and derives from the favorable

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[4]cf. *City of Chicago v. Baptist Theological Union*, 115 Ill. 245, 2 N.E. 254 (1885).

constitutional position of religion and not as a gratuitous aid which the State may grant or withdraw according to its then assessment of the desirability of religion.

Let us note before concluding this argument that the interference with the free exercise of religion involved in the taxation of the property of churches used exclusively for religious purposes becomes clear if we think about its enforcement. If the great Cathedral of St. John the Divine in New York were to be taxed on a value basis, upon failure to pay the tax, might it not be necessary for the State of New York to put the cathedral up for sale? Might it not be necessary for its communicants to tear it down and replace it with a less costly structure? It is easy to see why it could categorically be said in *Constitutionality of Religious Tax Benefits*, 49 Columbia Law Review 967, (1949): "The exemption from taxation of property devoted to religious uses constitutes the oldest tax benefit conferred upon religious institutions. Constitutional or statutory provisions for such exemptions exist today in all states and the District of Columbia." (p. 969)

This confrontation will be avoided by recognizing the rule of law and constitutional interpretation which is argued for in this brief. It will also provide a logical basis for countless decisions which have taken for granted tax exemption for property of religious groups used exclusively for religious purposes. Such cases are compiled in 84 *Corpus Juris Secundum* 289-291. While most take the principle for granted and rely on state constitutional provisions or statutes, the adoption of the interpretation implied in *Murdock* (supra) and here argued in greater length, provides a basis in constitutional principle for opinions heretofore accepted without inquiry and will avoid in the future a plethora of unnecessary litigation.

At the state level four important cases have challenged tax exemptions based on religious grounds. The exemptions were upheld in all four cases. This Court declined to pass on three of the cases presented. The cases were: *Garrett*

Biblical Institution v. Elmhurst State Bank, 331 Ill. 308, 163 N.E. 1 (1928); *Lundberg v. County of Alameda, et al.*, 46 Cal. 2d 644, 298 P 2d 1 (1956) and *Heisey v. County of Alameda et al.*, app. dismissed 352 U.S. 921 (1956); *General Finance Corp. v. Archetto, Tax Assessor*, 93 R.I. 392, 176 A 2d 73 (1961), app. dismissed, 369 U.S. 423 (1962); *Madalyn E. Murray, Trustee, et al. v. Comptroller of the Treasury of Maryland, et al.*, 241 Md. 383, 216 A 2d 897 (1966), cert. den., 385 U.S. 816 (1966).

We do not believe that these opinions will be particularly helpful in this litigation even though all can be used to support the proposition that it is not unconstitutional to exempt from taxation the property of churches used exclusively for religious purposes. It is incredible that the Court of Appeals of Maryland–in the same year that it produced its great opinion in *Horace Mann League v. Board of Public Works*, 220 A 2d 51 (1966)–should have come up with the strange opinion in *Murray v. Comptroller of the State of Maryland*, 216 A 2d 897. The latter opinion might be described as finding that there is no property used exclusively for religious purposes in Maryland. There, it appears, the churches perform primarily secular welfare functions and any aid resulting from statutory tax exemption to religious denominations is merely incidental to the achievement of a secular purpose.

The Maryland court held that tax exemption for places of worship was perhaps religious in origin but that:

> ". . .today, religious organizations, as a major part of their functions, carry on activities secular in nature, of substantial benefit to the community, such as aid to the poor and aged, day nurseries, care of the sick and efforts to eliminate racial inequalities. Programs such as these serve public needs; the performance of these functions by private agencies saves the State the expense of providing the same services. If there could be a fair and practical division of the portions of church-owned properties devoted to the conduct of such secular activities, a

> proportionate tax exemption of the parts of the properties devoted to such uses could have been considered. But the practical administrative difficulties in such an apportionment are apparent, and courts cannot say that the expense and inconvenience involved would not be disproportionate to the revenue obtained. *Carmichael v. Southern Coal & Coke Co.*, supra, 301 U.S. at 511. If no exemptions were given the religious organizations for the partial use of their properties for secular purposes, when charitable and other institutions which carry on similar work are granted exemption, serious questions of unconstitutional discrimination might arise." (pp. 907-908)

The Maryland Court thus held that the churches in Maryland are primarily secular welfare agencies. The court goes even further and equates churches with other fringe benefits offered by real estate developers to increase the tax base of their lands to the mutual benefit of the developer and the tax collector. It annihilates the principle of church-state separation by defining the church out of existence on the authority of the city assessor. The Maryland Court said:

> ". . .there is, today, a generally recognized reason, entirely secular in nature, for the state to encourage the building and maintenance of houses of worship. Such edifices and the activities carried on therein, may well be deemed to attract persons to communities and to tend to increase the general tax assessment base. Real estate developers are donating sites to churches in their planned communities as part of the efforts to attract purchasers. Columbia, a city projected to arise in Howard County between Baltimore and Washington, plans to have churches as well as super-markets and office buildings as part of the community—obviously in hope of attracting purchasers for the lots and houses. Anderson, *A Brand New City for Maryland*, Harper's Magazine, November, 1964. The Baltimore Urban Renewal and Housing Agency, whose goal is the prevention and elimination of blight and slums, has invited churches,

> with other community groups and institutions, to share in the formulation of plans for project areas. The increase in the general tax base through the building of houses and apartment houses by persons attracted by the presence of a church in the neighborhood is a governmental motive in no way connected with the support or establishment of religion. The object sought can not reasonably be deemed to be attainable with equal effect without the tax exemption of houses of worship." (pp. 908-909)

It is a happy coincidence that the legal solution to this problem in church-state relations can claim the acquiescence of so many Christians and Judaists without infringing the constitutional rights of the appellant.

A Baptist minister is quoted in the August 19th edition of the *Albuquerque Journal* as pointing out in perhaps an oversimplified but certainly relevant manner: "If it is right that the state should not support the churches, then it is right that the churches should not support the state." Fredrick Walz's complaint lies elsewhere than against freedom from taxation of real property used exclusively for religious purposes; and his is a genuine complaint which can and will be answered in other litigation.

CONCLUSION

The order of the Court of Appeals of the State of New York should be affirmed.

Respectfully submitted,

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